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Site Missouri Electric Works  
ID# MOD980965982  
Break 10.7  
Other 8-16-99



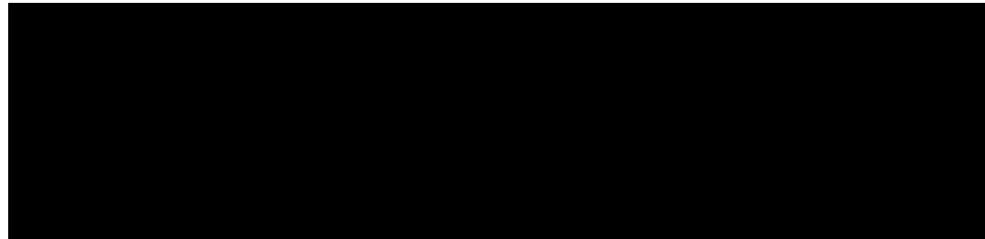
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF REGIONAL COUNSEL  
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TO: Bill Brighton, DOJ/EES, (202) 514-4180

DATE: August 16, 1999

NO. OF PAGES: 16, including this cover

MESSAGE:

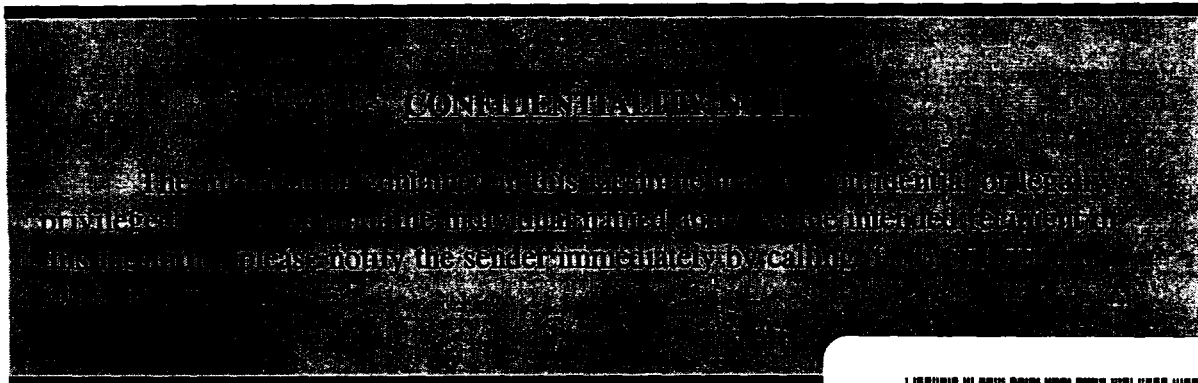


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SUPERFUND RECORDS

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From the desk of:

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R.B. OLIVER (1850-1934)

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REC'D AUG 17 1999

August 12, 1999

David Hoefer, Esq.  
Alex Chen, Esq.  
USEPA Region 7  
901 N. Fifth Street  
Kansas City, KS 66101

Re: MEW SITE TRUST FUND

Gentlemen:

Enclosed please find a copy of the Complaint we filed on behalf of the MEW Site Trust Fund on August 10, 1999.

Sincerely,

OLIVER, OLIVER & WALTZ, P.C.

John L. Oliver, Jr.

JLOjr:gn

Enclosure

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

AUG 10 1999

MEW SITE TRUST FUND, STATE STREET  
BANK and TRUST COMPANY of MISSOURI,  
N.A., Trustee,

Plaintiff,

v.

CHEMETCO, INC.,  
JOHN BENSON ELECTRIC COMPANY,  
SPARTECH CORPORATION,

Defendants.

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
CAPE GIRARDEAU

CIVIL ACTION NO.

1:99CV00098RWS

COMPLAINT

COMES NOW plaintiff, by its counsel, and for its Complaint and causes of action  
against defendants, alleges and states as follows:

Preliminary Statement

1. This is a civil action brought under Section 107 and 113 of the Comprehensive  
Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601, et seq.  
("CERCLA"), by the MEW Site Trust Fund, State Street Bank and Trust Company of  
Missouri, N.A., Trustee (hereinafter the "MEW Trust" or "plaintiff").

2. The action is brought to recover the costs of response incurred and which may  
be incurred by the members of the MEW Trust in response to releases and threatened releases  
of polychlorinated biphenyls ("PCBs") and other hazardous substances at a facility in Cape  
Girardeau, Missouri (the "Site"), formerly owned and operated by Missouri Electric Works,  
Inc. ("MEW").

3. The action also seeks contribution from each defendant pursuant to Section  
113(f) of CERCLA, 42 U.S.C. §9613(f). Pursuant to Section 113(g)(2) of CERCLA, 42U.S.C.

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§ 9613(g)(2), and 28 U.S.C. § 2201, the MEW Trust seeks a declaratory judgment that each defendant shall be liable for response costs incurred by the MEW Trust in the future at the Site.

### **Jurisdiction and Venue**

4. Pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §9607 and §9613(b), and 28 U.S.C. §1331, this Court has jurisdiction over the subject matter of this action and the parties hereto.

5. Venue lies in the Eastern District of Missouri pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the releases and threatened releases of hazardous substances and damages at issue occurred in this District.

### **The Plaintiff**

6. The MEW Trust is a trust created under the Missouri Electric Works, Inc. Site Trust Agreement, by and between forty-two entities who have incurred and will in the future incur “response costs” as defined by CERCLA Section 101(25), 42 U.S.C. § 9601(25). State Street Bank and Trust Company of Missouri, N.A., is the Trustee of the MEW Trust.

7. The MEW Trust is a “person” within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

### **The Defendants**

8. Chemetco, Inc. is a corporation organized under the laws of the State of Delaware and is a “person” within the meaning of CERCLA Section 101(21). In 1978, Chemetco, Inc. arranged for the disposal of electrical transformer oil containing PCBs at the Site.

9. John Benson Electric Company is a corporation organized under the laws of the State of Missouri and is a “person” within the meaning of CERCLA. Section 101(21). Between

1967 and 1980, John Benson Electric Company arranged for the disposal of electrical transformer oil containing PCBs at the Site.

10. Spartech Corporation is a corporation organized under the laws of the State of Missouri and is the successor to Atlas Plastics Corporation. Spartech is a person within the meaning of CERCLA Section 101(21). Between the early 1960s and 1982, Atlas Plastics Corporation arranged for the disposal of electrical transformer oil containing PCBs at the Site.

### **GENERAL ALLEGATIONS**

11. From approximately 1954 to 1988, MEW operated an electrical transformer repair business at the Site at which it serviced, repaired, rebuilt, purchased, sold and scrapped electrical equipment, including electrical transformers.

12. During the operation of MEW's business, PCBs and other hazardous substances leaked and/or were spilled onto the ground, and the Site became contaminated with high levels of PCBs and other hazardous substances.

13. In 1984, the Missouri Department of Natural Resources ("MDNR") inspected the MEW Site and found numerous drums containing electrical oil. These drums were used by MEW to store PCB-contaminated oil drained from transformers and other electrical equipment sent to the Site.

14. The Site also contained more than 100 transformers sent to the Site by one or more of the defendants. PCB-contaminated oil leaked from some of these transformers onto the ground at the Site. Other transformers and electrical equipment were repaired, serviced, stored or dismantled for scrap at the Site.

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15. From 1985 until 1990, EPA undertook removal and investigative actions pursuant to Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to define the nature and extent of contamination and to control further migration of hazardous substances from the Site.

16. EPA asserted that certain parties were potentially responsible parties ("PRPs") under section 107 of CERCLA and thus were responsible for the remediation of the Site.

17. Each defendant in this case was notified by EPA that it was a potentially responsible party ("PRP") in connection with the Site.

18. In December 1988 EPA signed an administrative order on consent under which certain parties, including members of the MEW Trust, agreed to conduct a remedial investigation and feasibility study ("RI/FS") to determine the nature and extent of contamination of the Site and to evaluate various options for remediating the Site.

19. Approximately 180 of the PRPs, including members of the MEW Trust, joined the MEW Steering Committee ("MEWSC"), an unincorporated association, and the MEWSC coordinated efforts to conduct the RI/FS.

20. The RI/FS indicated that over 70% of the Site's surface soil as well as soils off the site were contaminated with PCBs at concentrations exceeding 10 parts per million ("ppm"). Approximately four acres of contaminated surface soil at the site contained PCB concentrations of at least 500 ppm.

21. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990. 55 Fed. Reg. 6158 (1990).

22. On June 29, 1992, the United States filed a Complaint on behalf of the Administrator of the U.S. EPA pursuant to Sections 104(a) and (b), 106 and 107(a) of CERCLA,

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42 U.S.C. §§ 9604(a) and (b), 9606 and 9607(a), against numerous PRPs to recover the costs which had been and would be incurred by the United States in responding to the releases or threatened releases of hazardous substances at the Site, and to require remedial action with regard to all hazardous substances in accordance with the terms of the Record of Decision prepared for the Site and the National Contingency Plan. The case was styled United States of America v. Union Electric Company, et al., Civil Action No. 1:92 CV 00078 GFG (United States District Court for the Eastern District of Missouri, Southeastern Division).

23. The State of Missouri filed a similar complaint against the same PRP defendants, styled State of Missouri v. Union Electric Company, et al., Civil Action No. 1:92 CV 00088 GFG. The cases were consolidated.

24. The members of the MEW Trust Fund and numerous de minimis parties entered into a Consent Decree with the United States and the State of Missouri under which the members of the MEW Trust as Settling Defendants are obliged to perform soil remediation and groundwater investigation at the Site. The Consent Decree also obligates the members of the MEW Trust Fund to pay the United States and the State of Missouri oversight and response costs incurred after September 3, 1990. The Consent Decree was approved by the Court on August 14, 1996.

25. Each of the defendants is a PRP at the Site.

## **COUNT I**

### **Recovery of Response Costs and Declaratory Judgment**

26. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

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\* \* \*

(3) any person who by contract, agreement or otherwise arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing hazardous substances . . .

(4) any person who . . . accepted any hazardous substances for transport to disposal or treatment facilities . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

27. Each defendant, by contract, agreement, or otherwise arranged for the disposal, repair, storage and/or treatment, or arranged with a transporter for transport for disposal, repair, storage and/or treatment, of hazardous substances, including PCBs, at the Site.

28. PCBs are a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. The Site is a "facility" as defined in Section 101(19) of CERCLA, 42 U.S.C. § 9601(19).

30. In response to releases and threatened releases of hazardous substances at the Site, plaintiff was caused to incur, has incurred and will continue to incur necessary costs of response consistent with the National Contingency Plan.

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the defendants is jointly and severally liable to the plaintiff for the response costs that the plaintiff

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has incurred or will incur in response to releases and threatened releases of hazardous substances at the Site.

WHEREFORE, the MEW Site Trust Fund prays this Court enter a judgment pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a) and a declaratory judgment pursuant to 28 U.S.C. § 2201 and CERCLA Section 113(g), 42 U.S.C. § 9613(g), holding each defendant jointly and severally liable for response costs, applicable attorney fees and prejudgment interest incurred or to be incurred by the members of the MEW Site Trust Fund in response to releases or threatened releases of hazardous substances at the Site, and awarding such other relief as the Court deems just and proper.

## COUNT II

### Contribution

32. Paragraphs 1-31 are incorporated herein by reference.
33. CERCLA Section 113(f), 42 U.S.C. § 9613(f), provides, in part:
  - (1) Contribution –

Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring any action for contribution in the absence of a civil action under Section 106 or Section 107.

34. Each defendant is liable or potentially liable under CERCLA Section 107 and has not paid its equitable share in funding response activities respecting the Site, or in reimbursing response costs incurred by plaintiff or U.S. EPA.

35. Pursuant to CERCLA Section 113(f), each defendant is liable in contribution for its equitable share of response costs incurred or to be incurred by the members of the MEW Site Trust Fund.

WHEREFORE, the MEW Site Trust Fund prays this Court enter a judgment pursuant to CERCLA Section 113(f), 42 U.S.C. § 9613(f), holding each defendant liable for its equitable share of the response costs incurred and to be incurred by the members of MEW Trust Fund, applicable attorney fees and prejudgment interest, and awarding such other relief as the Court deems just and proper.

OLIVER, OLIVER & WALTZ, P.C.



By: \_\_\_\_\_

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